

**BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY**

IN THE MATTER OF:	)	Case No. 3324
	)	
DAVID W. NYMAN, D.O.	)	<b>FINDING OF FACT,</b>
Holder of License No. 3823 for the	)	<b>CONCLUSIONS OF LAW, AND</b>
practice of osteopathic medicine in the	)	<b>ORDER OF REVOCATION</b>
State of Arizona.	)	
_____	)	

The Arizona Board of Osteopathic Examiners in Medicine and Surgery (hereafter "Board") held a public meeting on March 27, 2004, regarding David W. Nyman, D.O. (hereinafter "Respondent"). Following the Board's review of information and evidence obtained pursuant to A.R.S. § 32-1855 and § 32-1855.01, and having considered the evidence and information in the matter and being fully advised, the Board entered Findings of Fact, Conclusions of Law and Order of Summary Suspension, pending an administrative Hearing.

On April 12, 2004, the Board served a Complaint and Notice of Hearing on Respondent, setting the Administrative Hearing for May 8, 2004 at 1:00 p.m., at the offices of the Board, 9535 E. Doubletree Ranch Road, Scottsdale AZ, and requesting a written response pursuant to A.R.S. § 32-1855(G) within twenty days of the date of the Complaint and Notice of Hearing.

On May 8, 2004, the Board conducted the administrative hearing. Respondent did not appear, nor did he file a written response to the Complaint and Notice of Hearing. After having heard the arguments and considered the evidence presented, the Board voted to enter the following:

**JURISDICTIONAL STATEMENTS**

1. The Board is empowered, pursuant to A.R.S. §§ 32-1800 et seq. to regulate the licensing and practice of osteopathic medicine in Arizona.
2. Respondent holds license No. 3823 to practice osteopathic medicine in Arizona. That

license placed on probation as a condition of being issued. The Order of Probation for Issuance of License (hereinafter "Probation Order") was effective October 31, 2002.

### **FINDINGS OF FACT**

3. Respondent previously held license No. 3510 to practice osteopathic medicine in Arizona. That license was issued on January 19, 2000 and placed on probation as a condition of being issued. On March 4, 2000, that license was summarily suspended for allegations of non-compliance with the terms of probation. On April 20, 2000, that license was revoked for non-compliance and for practicing medicine without a license during the time the license was suspended.

4. During the routine investigation of Respondent's application for the license he currently holds (3823), the Board received information from the Pima County Superior Court that Respondent had been convicted of one count of "Facilitation to Obtain or Procure the Administration of a Narcotic Drug by Fraud, Hydrocodone" (CR20003225). The matter was classified a Class 6 undesignated, nondangerous and nonrepetitive offense upon Respondent's successful and early termination of probation. As described in the Drug Enforcement Agency's investigative reports, the underlying conduct was that Respondent prescribed hydrocodone to members of his immediate family for self-abuse purposes and did so between March 4, 2000 and August 2000, when he knew his license (3510) had been suspended or revoked.

5. One term of his Probation Order was that Respondent "... shall obtain psychiatric or psychological treatment . . . shall not discontinue or reduce the frequency of psychotherapy sessions until she (sic) has submitted a written request to the Board and obtained Board approval."

6. Respondent failed to make or keep appointments for sessions with his therapist in January, February, and March 2004. Respondent did not submit a written request to discontinue or

reduce the frequency of those sessions, nor did Respondent have Board approval to do so.

7. One term of his Probation Order was that Respondent "shall maintain a monthly log . . . and provide a copy to the Board at the first of each month listing all medications taken by him..."

8. Respondent failed to list on his monthly medication logs for July, August, October, and November 2003 that he had been prescribed hydrocodone from at least three physicians, and had at least six times picked up from one pharmacy the hydrocodone so prescribed for him. Respondent failed to submit a medication log for the month of December 2003.

9. In her records of Respondent's care, Margaret Miller, M.D. notes Respondent requested an early refill of Lortab. She noted that no more narcotics would be prescribed, and asked that Respondent see her the next day. Respondent did not do so, stating that he was going out of town the next day. That next day Respondent presented to an in-town emergency room and was prescribed additional narcotics.

10. One term of his Probation Order was that Respondent " shall participate in a minimum of three (3) self-help meetings per week...shall keep a log of all meetings attended and signed by the chairperson...provide the Board a copy of the signed log the first of every month."

11. Respondent failed to attend, on a consistent basis, at least 3 meetings per week. Between June 2003 and February 2004, Respondent reported attending 10-12 meetings (averaging just under 3 meetings per week) in five of those months. The other four months he reported attending between 4-8 meetings per month (averaging 2 or fewer per week). Respondent failed to submit logs showing attendance at any meetings during the four weeks between December 9, 2003 and January 15, 2004.

12. On March 3, 2004 Respondent submitted a log of meetings he attended in February 2004, on which were signatures of the chairmen for meetings Respondent purportedly attended

February 2 and 4, 2004. The form on which these signatures were written had not been given to Respondent until February 18, 2004, two weeks after those meetings.

13. According to records at Target pharmacy #0700, between January 29 and March 19, 2004 Respondent called in prescriptions for hydrocodone for patient C. P. (DOB 1/5/1961), using a DEA number assigned to his employer. On at least one occasion Respondent picked up the prescription himself. The address C. P. gave the pharmacy is the same address Respondent gave to the Board as his address of record when he was previously licensed by the Board.

14. Respondent told Board that C. P. is his wife's cousin, who was seeking a second opinion for cancer treatment and who rented the same house he previously had rented.

15. According to the records at Osco pharmacy #995, Respondent called in prescriptions on February 4, March 1, and March 3, 2004 for hydrocodone for patient "Catherine Haberman" (DOB 1/5/1961) using a DEA number assigned to his employer. On March 3, 2004, Respondent himself picked up the prescription he called in on March 1, 2004. Respondent told the pharmacist that the patient was being treated for cervical cancer patient at his employer's medical center. On another occasion, Respondent attempted to pick up a prescription he had called in on March 4, 2004, claiming he was the patient's boyfriend. The pharmacy refused to give him the prescription, and instead asked him for identification. He said he did not have identification with him and left. No one ever returned to pick up the prescription called in on March 4, 2004.

16. Records of the Pima County Grand Jury Indictment (159-GJ-236) handed down in Respondent's criminal case in October 2000 show that "Catherine Haberman" was an alias used by Respondent's wife, a member of his immediate family.

17. Respondent's employer, the University of Arizona / Arizona Cancer Center, denied that C.P. or "Catherine Haberman" were patients under the care of the medical center, and therefore

Respondent was not authorized to use the employer's DEA number in prescribing to them.

### **CONCLUSIONS OF LAW**

1. Pursuant to A.R.S. § 32-1800, et seq. the Arizona Board of Osteopathic Examiners in Medicine and Surgery has subject matter and personal jurisdiction in this matter.
2. The conduct and circumstances described in paragraphs 4 through 15 above constitute unprofessional conduct as defined in the following paragraphs of A.R.S. § 32-1854:

(23) Prescribing controlled substances to members of one's immediate family unless there is no other physician available within fifty miles to treat a member of the family and an emergency exists.

(26) Violating a formal order, probation or a stipulation issued by the Board under this chapter.

(41) Any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so.

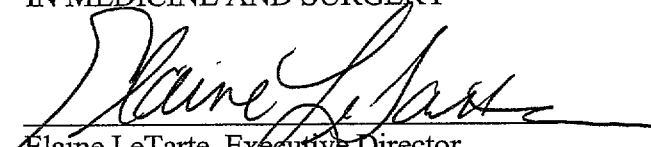
### **ORDER**

Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED THAT:**

License number 3823, issued to David W. Nyman D.O. (Respondent), is **REVOKED**.

ISSUED this 10<sup>th</sup> day of May 2004.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY

  
Elaine LeTarte, Executive Director  
9535 E. Doubletree Ranch Road  
Scottsdale AZ 85258

### **Notice of Right to Request a Rehearing (Appeal)**

The Respondent has the right to request a rehearing or review of this matter pursuant to A.R.S. § 41-1092.09. The request for rehearing or review must be filed with the Arizona Board of Osteopathic Examiners within thirty (30) days of service of this Order. Respondent must specify in detail and with particularity at least one of the seven grounds that apply to the request for rehearing or review,

Nyman / Case 3324  
Page 5 of 6

as mandated by A.A.C. R4-22-106(C). A request for rehearing or review shall be a prerequisite prior to seeking judicial review pursuant to A.R.S. § 41-1092.09.

Served by U.S. certified mail  
(return receipt requested) this 11<sup>th</sup> day of May 2004 to:

David W. Nyman, D.O.  
2072 W. Double Eagle Drive  
Tucson, AZ 85373

Copy mailed this 11<sup>th</sup> day of  
May 2004 to:

Blair Driggs, Assistant Attorney General  
CIV/LES  
1275 W. Washington  
Phoenix AZ 85007

Copy sent by facsimile this 11<sup>th</sup> day of  
May 2004 to:

Tom Babicke  
Drug Enforcement Agency  
Tucson AZ  
(520)573-5632

Celina Shepherd